IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 373 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
SHAMEEBEN WD/O SIKANDARBHAI JAMALBHAI VOHRA & 5 - Defendant(s)

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Appearance :
MS MAYA DESAI for Appellant,
MR HM PARIKH for Defendant Nos.1 - 5.
NOTICE UNSERVED for Defendant No.6,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/08/2007

ORAL JUDGMENT

1. Heard Ms.Maya Desai, learned counsel for the appellant and H.M. Parikh, learned counsel for the respondent Nos.1 to 5. None for the respondent No.6 though served.

2. Ms.Maya Desai, learned counsel for the appellant submits that the respondent No.6 was driving the vehicle on the fateful day and as the appellant is not claiming any relief against the respondent No.6, the name of the respondent No.6 can safely be deleted.

3. The prayer is accepted. Office to make necessary amendment in the cause title within one week.

4. The appellant, being aggrieved by the award dtd.21/4/1990 passed by the Motor Accident Claim Tribunal (Main), Panchmahal at Godhra in Motor Accident Claim Petition No.11 of 1986, is before this Court with a submission that the tribunal was unjustified in awarding Rs.50,000=00 in excess of the entitlement of the claimants.

5. As the rashness and negligence on the part of the driver, and liability of the appellant to pay the compensation, is not under dispute, this Court is not required to enter into the facts, but, as Ms.Desai, learned counsel for the appellant has submitted that present is a case of

contributory negligence, the tribunal should have held that in a case of a head on collision, each of the driver was liable to the extent of 50%.

6. The case of the claimants was that a Matador / Tempo bearing registration No.GTJ-5229 was going towards Vidyanagar, while it reached near Doctor-Na-Muvada, it crossed the truck which was parked on right of its side and at that point of time, the offending Bus bearing registration No.GRS-3432 driven rashly and negligently by the driver of the bus, hit the Matador / Tempo which occasioned fire to the goods, injuries to the cleaner and ultimate death of the driver. The driver in the Bus appeared before the the tribunal and submitted that after finding that a truck was lying stationary on its left, they overtook the standing truck and after they had come on the open way, the matador dashed against the bus.

7. Ms.Desai, learned counsel for the appellant, however, submitted that from the Panchnama prepared on the spot, existence of the truck is not shown, therefore, this Court must observe that there was no truck. The said argument, in the opinion of this Court, would not assume

any importance, because, the case of each of the party was that a truck was lying stationary on the left side of the bus and the driver, either had overtaken the truck, or, was in process of overtaking the truck and at that point of time, the accident occurred.

8. From the evidence it would clearly appear that the Matador / Tempo was on its left side and the bus to overtake the stationary truck had come to more on its right i.e. on the road which is reserved for oncoming vehicular traffic. It would be trite to say that when a vehicle is trying to overtake another vehicle, then, the driver of the said vehicle is required to exercise extra care and caution, firstly by seeing that whether the truck sought to be overtaken is following some other vehicle and whether such vehicle can be safely overtaken and that whether from the other side some vehicle is coming or not. If the driver loses these important aspects and then causes an accident, then, the driver of the vehicle which is trying to overtake some moving or stationary vehicle, would certainly be held liable. In the present case, the tribunal was not unjustified in holding the driver liable to the extent of 80%.

9. So far as the quantum is concerned, looking to the income and age of the deceased, I am unable to hold that the tribunal was unjustified in making the award in favour of the claimant.

10. The appeal deserves to and is accordingly dismissed. Interim relief, if any is vacated. No costs.

(R.S. GARG, J.)

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